

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1988.03
COMPLAINT INVESTIGATOR:	Susan Reimlinger
DATE OF COMPLAINT:	January 6, 2003
DATE OF REPORT:	February 5, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	March 14, 2003

COMPLAINT ISSUES:

Whether the Elkhart Community Schools violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written.

511 IAC 7-27-7(b) by failing to monitor the implementation of the student's IEP, failing to provide technical assistance and consultation to the student's general education teachers and other school personnel interacting with the student, and failing to be responsible for all other requirements identified in 511 IAC 7-17-72.

511 IAC 7-27-(c)(4) by failing to provide the services identified in the student's IEP no later than the initiation date state in the student's IEP.

511 IAC 7-27-(d) by implementing the student's IEP for a period of more than twelve (12) months.

511 IAC 7-27-7(e) by failing to have the student's IEP in effect at the beginning of the school year.

511 IAC 7-27-3(a)(3) by failing to have one of the student's general education teachers participate in a case conference committee (CCC) meeting.

FINDINGS OF FACT:

1. The student (Student) is 19 years old and eligible for fulltime special education and related services as a student with a moderate mental disability, a communication disorder, and multiple disabilities.
2. The IEP that the School indicates was in effect at the time of this complaint was developed on May 2, 2001, with parental agreement signatures dated the following September 26, 2001. The School explained that it is usual for the Parents to request a rough draft of an IEP prior to a case conference, to take the developed IEP home after the case conference, to suggest revisions, and after the revisions have been made, to sign agreement.
3. At a case conference on May 30, 2002, a new IEP was developed, which the Parents took home to review. They then returned the IEP with an attached letter suggesting changes. Due to these requested changes and the fact that a new TOR was to be hired by fall 2002 for the Student's classroom, the Parents did not sign as agreeing with the IEP, requesting that it not be completed until after the new TOR had a chance to

work with the Student. There is no documentation that the School proposed to adopt the previous IEP or make the newly proposed IEP an “interim” IEP.

4. The CCC, including the special education TOR, who was newly hired and new to special education, met on September 12, 2002, to continue work on the IEP begun May 30, 2002. From September 2002 through January 2003, there were numerous exchanges and meetings between the School and the Parents as the School attempted to address parental concerns about IEP components incorrectly written or omitted. The IEP format used by the School is computerized and yields a typewritten document. Of the multiple versions of the Student’s proposed May 2002 IEP that were submitted to DOE as documentation, the places for typed dates did not change to reflect meetings or addendums over time. No versions included any attempt, via handwritten notes, to clarify any of the issues or plans/proposals, or to indicate what action or meeting occurred on what date, what was to happen when and by whom, or which IEP components were revised at each meeting. The School acknowledges that the various stages of IEP development do not clearly indicate what could be an “agreed-upon IEP” and has begun taking steps to rectify this. As of January 24, 2003, there is an agreed-upon IEP and the School has, through preparing the documentation to submit for this complaint, begun addressing the issues raised in this complaint.
5. Documentation submitted regarding implementation of the IEP and TOR responsibilities included progress reports. For 2001-2002 one item is a personal log-type booklet with photos of the Student engaged in various activities, but no reference to IEP goals or progress on them. Another item is proposed charting forms, with no actual data recorded. A “transcript report” for Semester 1 2001 through Trimester 1 2002 indicates grades for subjects, but no reference to IEP goals. One progress report for March 2002, virtually the same text as the progress report for January 2002, does address IEP goals. Several charts do indicate work on select objectives for March and April 2002. In the documentation regarding progress for 2001-2002, one general education teacher, a Coordinator of a special program where the Student worked, remarked about the Student’s participation, but the remarks did not clearly indicate knowledge about the IEP nor is there any documentation from the specifically named general education teacher.

For 2002-2003, since there is not an “agreed-upon” IEP, it is not clear which goals the TOR would be responsible for implementing. Several reports about visits to job sites describe what the Student was observed doing, but do not specifically reference any past or proposed IEP goals. One progress report for December 2002 does list each proposed IEP goal and addresses the frequency implemented and degree of progress. The design of a “daily report” form does not include a sub-heading for IEP goals, however, some of the notes written under other headings do reference IEP goals. The School acknowledges these same inconsistencies and has begun taking steps to rectify them. The School failed to provide documentation of the TOR’s effort to see that all personnel are implementing the IEP.

6. Each of the five IEP versions submitted indicates under special education services that there would be daily involvement with general education. However only one IEP version contains the actual signature of a general education teacher as being in attendance.

CONCLUSIONS:

1. Findings of Fact #4, 5, and 6 indicate that there is no currently agreed-upon IEP to implement. Therefore, a violation of 511 IAC 7-27-7(a) is found.
2. Finding of Fact #5 indicates that the TOR is communicating frequently with the Parents, but the communication the School submitted does not clearly demonstrate implementation of the IEP, consultation with school personnel, or other responsibilities of the TOR. Therefore, violations of 511 IAC 7-27-7(b) and 511 IAC 7-17-72 are found.

3. Finding of Fact #4 indicates that there is no currently agreed-upon IEP, thus no services identified and no initiation date. Therefore, a violation of 511 IAC 7-27-7(c)(4) is found.
4. Finding of Fact #4 indicates that the in-effect IEP is older than 12 months. Therefore, a violation of 511 IAC 7-27-7(d) is found.
5. Findings of Fact #2 and 3 indicate that there was not an agreed-upon IEP in effect at the beginning of the 2002-2003 school year. Therefore, a violation of 511 IAC 7-27-7(e) is found.
6. Finding of Fact #6 indicates that there was a general education teacher in attendance at only one of the five case conferences included in the documentation submitted. Therefore, a violation of 511 IAC 7-27-3(a)(3) is found

The Department of Education, Division of Exceptional Learners requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Elkhart Community Schools shall:

1. Send a written reminder to building administrators and special education personnel regarding the requirement in 511 IAC 7-27-3(a)(3) about participation of general education teachers at case conferences. A copy of the written memorandum and a list of the staff to whom the memorandum was given shall be sent to the Division no later than February 14, 2003.
2. Ensure that the IEP developed on January 24, 2003, and signed by the Parents on January 29, 2003, is implemented by all personnel interacting with the student. The TOR will gather from each of such personnel a dated statement as to:
 - 1) which aspect of the IEP that person is responsible for implementing,
 - 2) how that person will document IEP implementation for communication to the Parents, and
 - 3) what, if any, consultation that person needs from the TOR in order to accomplish 1 and 2.Copies of each 3-part statement must be submitted to the Division no later than February 21, 2003.
3. Ensure that the IEP is being implemented by following the plan for each goal regarding reporting progress "every 6 weeks." For two 6-week periods, the TOR will:
 - 1) record progress as indicated in the IEP and per established building procedures, and
 - 2) write an assurance statement describing how IEP services were implemented.Copies of the documents for each of the two time periods must be submitted to the Division no later than March 10, 2003.
4. Ensure that no IEP will be in effect for longer than 12 months, and that an IEP will be in effect at the beginning of each school year by designing a plan for incorporating parental input/decision-making into IEP development that will meet with Article 7 requirements. A copy of that plan must be submitted to the Division no later than February 28, 2003.